



To: Members of the House Labor Committee
From: Wendy Block, Michigan Chamber of Commerce *WB*
Date: March 17, 2010
Re: Chamber Opposes Limitations on Employee Background Checks (HB 4528)

This memorandum is to inform you of the Michigan Chamber's **opposition** to House Bills 4528, legislation to prohibit employers from using an applicants' credit history data when making hiring decisions. We are opposed to this legislation because it limits the flexibility needed by employers to use a variety of factors and tools to determine the best candidate for a position.

Specifically, we are opposed to this unwarranted governmental interference in the workplace for the following reasons:

- **Credit history checks are an essential employment-screening tool** because companies have a responsibility to know the employee. Based on the doctrine of "Negligent Hiring", employers may face liability issues if the court determines that the employer knew -- or should have known -- negative facts of an employee's background that should have disqualified him/her from having the job. Just as an employer may not want to hire an individual who has multiple recent drunk driving convictions as a truck driver, they also may not wish to hire someone who has multiple bankruptcies as a financial planner.
- **Credit checks help employers determine the accuracy and completeness of an application/resume.** Credit reports are commonly used for employment checks to show former addresses, former employment and other information related to a prospective employee. The use of these reports enables employers to verify the accuracy of the information supplied by a job applicant and avoid hiring decisions based on incomplete or falsified information.
- **Occupational fraud is on the rise.** Employee theft is on the rise and is a major financial problem for companies. The National Retail Security Survey estimates that the U.S. retail industry lost \$15.9 billion in 2009 due to employee theft.¹ In addition, the Association of Certified Examiners' 2008 Report to the Nation on Occupational Fraud and Abuse found that employees who engage in workplace fraud (e.g., check tampering, theft, fraudulent reimbursement schemes) are usually "first time offenders" and found that employee financial

¹ http://www.nrf.com/modules.php?name=News&op=viewlive&sp_id=746

pressures are one of the “key motivating factors” of workplace fraud and theft.² In fact, the report found that “the most commonly cited behavioral red flags were perpetrators living beyond their apparent means (39% of cases) or experiencing financial difficulties at the time of the frauds (34%).

- **Consumer protections are sufficient under federal law.** The federal Fair Credit Reporting Act expressly allows for the use of credit reports for employment decisions and governs the use of this information. The FCRA requires secure consent from employees or applicant to obtain these reports. In addition, the FCRA provides important consumer protections by requiring a notice by the employer if an adverse action is taken (e.g., an applicant is not hired) and notify the applicant of his/her FCRA rights.

- **New incentives for disgruntled job applicants to file “credit-check discrimination” lawsuits.** Under these bills, a job applicant could file a civil lawsuit against an employer for an alleged a violation and recover damages, costs and reasonable attorney fees. As a result, these bills would create a financial incentive for profit-seeking attorneys to file additional lawsuits against employers.

Credit histories are but one piece of the hiring puzzle – but an important one that must be retained. The consequences of making a poor hiring choice can be great, possibly leading to financial losses or, if the employee engages in severe misconduct, legal liabilities to customers, shareholders and/or other employees in the form of a negligent hiring lawsuit or other legal claims. As a result, the Michigan Chamber supports the right of employers to continue to use all tools available to make the most informed choices possible when selecting candidates for their companies and organizations.

We respectfully ask that you oppose HB 4528. Please do not hesitate to contact me at 517/371-7678 if you have any questions or would like to further discuss this issue.

² <http://www.acfe.com/documents/2008-rtm.pdf>